

**FILED**

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WASHINGTON STATE  
SUPREME COURT

Supreme Court No. 92741-3  
Court of Appeals No. 72939-05

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEGACY BELLEVUE 530, LLC,

Respondent,

v.

WGW USA, INC., and TIAN QING GUO,

Appellants.

APPELLANTS' PETITION FOR REVIEW

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### ***I. IDENTITY OF PETITIONER***

WGW USA, Inc. and Tian Qing Guo ask this Court to accept review of the Court of Appeals decision referred to below.

### ***II. COURT OF APPEALS DECISION***

On December 28, 2015, Division I of the Court of Appeals filed an unpublished opinion terminating review affirming the trial court's decision. A copy of the Court of Appeals' decision is attached hereto as Appendix A.

### ***III. ISSUES FOR REVIEW***

1. Per RCW 18.86.030(1)(d), see Appendix B, real estate brokers have a duty to disclose all material facts that may adversely effect the purpose of a transaction, that are known by the broker and not apparent or readily ascertainable to a party to the transaction. RCW 18.86.010(9), defines a material fact as one that substantially and adversely operates to defeat or impair the purpose of the transaction. See Appendix C. Case law has not defined "readily ascertainable," as intended by the legislature in this statute. So that brokers and their sellers and buyers and their landlords and tenants have a clear understanding of what information brokers must disclose, the Washington Supreme Court should provide a definition of "readily

ascertainable" and explain if there is any distinction between disclosures in lease transactions and disclosures in purchase and sale transactions.

#### ***IV. STATEMENT OF THE CASE***

Legacy Bellevue 530, LLC ("Legacy") owns a restaurant building and property in downtown Bellevue ("Legacy Property"), which Legacy leased to WGW USA, Inc. ("WGW") for 10 years. CP 269 - 270. The Legacy Property is located in downtown Bellevue on the south side of NE 6th St., just west of I-405. CP 185. NE 6th St. is a major east-west thoroughfare that crosses over I-405. CP 185.

Nelson, the real estate broker who represented Legacy, CP 45, 263, also was the property manager for the Legacy Property, CP 45, and in that capacity had been tracking since 2008 Sound Transit's potential need to condemn the Legacy Property for its light rail expansion. CP 246. The lease was signed in September 2012. CP 269-270. At that time, Nelson incorrectly believed that the Legacy Property was not at risk for condemnation, CP 46, 254 - 55, even though Nelson had reviewed documents on Sound Transit's website, CP 46, that showed in 2012, as discussed below, that the Legacy Property was at a 50% risk of future condemnation for the chosen

route through Bellevue.

During lease negotiations in September 2012, broker Nelson failed to disclose to WGW and Guo, WGW's owner, that there was any risk of condemnation. CP 258-59. Instead, broker Nelson incorrectly advised WGW that Sound Transit's rail line expansion was "scheduled" to run on the opposite side of NE 6th St. from the Legacy Property. CP 46. Nelson's advice was factually incorrect; Sound Transit had only determined that the rail line would cross I-405 at the NE 6th St. overpass, but in 2012 had not decided upon which side of NE 6th St. the rail line would run. CP 220.

Broker Nelson disclosed Sound Transit's future proximity to the Legacy property solely in positive terms. CP 46:

I informed (WGW) that a station was planned for the top of the hill at NE 6th Street adjacent to City Hall and the Train's route was scheduled to travel on the north side of NE 6th Street overpass to continue over 405. In my opinion, the added pedestrian traffic from the primary downtown Bellevue light rail station would directly benefit WGW's operation...

Accepting Nelson's representations as accurate, and relying upon Legacy's signing of a lease guaranteeing quiet and peaceful enjoyment for its ten year duration, WGW did not investigate any hypothetical problem Sound Transit might pose to the Legacy

Property. CP 388.

In May 2013, Nelson advised WGW that Sound Transit would be condemning a portion of the Legacy Property. CP 364. WGW was then trying to sell its business, and news of Sound Transit's condemnation rendered its business unmarketable. CP 364. In June 2013, WGW notified Legacy that it was vacating the Legacy Property and seeking rescission of the lease, due to Legacy's failure to disclose Sound Transit's potential need to condemn the Legacy Property, and that WGW never would have signed the ten year lease had WGW known of the substantial risk of condemnation. CP 402.

In August 2013, WGW filed this action for rescission, alleging both negligent and fraudulent misrepresentation, and seeking return of its \$124,866 security deposit and \$144,793 in tenant improvements WGW invested in anticipation of a ten year lease. CP 265, 401-02, 585-587. Legacy counterclaimed for breach of lease against WGW and Guo, as guarantor of the lease. CP 240.

Prior to lease negotiations In September 2012, Nelson, as property manager, had reviewed the following Sound Transit documents, which, when pieced together, showed that the Legacy Property was then at a 50% risk of condemnation:

1. Nelson had previously reviewed Sound Transit's July 2011 Final Environmental Impact Statement ("FEIS") and in particular its Appendix G-2, CP 248, which designated both the Legacy Property (identified as "Coco's") and the Northwest Building as potential acquisitions for route C9T. CP 184 - 85. The Legacy Property is on the south side of NE 6th St. just west of I-405 and the Northwest Building is on the north side of NE 6th St. just west of I-405 and directly across NE 6th St. from the Legacy Property. CP 184 - 85.

Appendix G-2 also provided a conceptual description of route C9T, one of several possible routes, as running on the north side of NE 6th St., over the Northwest Building property, characterizing its description of the path as a "current conceptual design," CP 185, of a "Conceptual Right-of-Way and Areas To Be Acquired." CP 185. Sound Transit had designated both the Legacy Property and the Northwest Building property as potential acquisitions, CP 184, because if route C9T was chosen, Sound Transit still had to determine exactly where along NE 6th St. the rail line would cross I-405. CP 220. See Appendix D hereto for Sound Transit's list of potential property acquisitions for route C9T, CP 184, and the "conceptual right-of-way" map, CP 185, showing the location of each

parcel at 30% engineering design. CP 218, 223. Once again, the Legacy Property is identified as "Coco's."

2. Nelson also had reviewed the November 2011 Memorandum of Understanding ("MOU") between Sound Transit and the City of Bellevue, CP 46, wherein route C9T was chosen as Sound Transit's rail line pathway through Bellevue, once again showing the "conceptual" design of the light rail path across the Northwest Building side of NE 6th St., explaining that "detailed design and mitigation will continue through project development." CP 187-88, 191, 195, 197. Therefore, even though for certain the rail line would cross I-405 at the NE 6th St. overpass, the exact alignment along NE 6th St. had not been determined. CP 220, 225. Therefore, because the Legacy Property and the Northwest Building property were on opposite sides of NE 6th St. just west of I-405, and because Sound Transit had designated both properties for potential acquisition, Sound Transit would need to condemn either the Legacy Property or the Northwest Building property, depending on the exact path of the rail line Sound Transit decided upon. The MOU also set in motion a Cost Savings Process to modify the design along route C9T. CP189, 191, 194.

3. Nelson attended the April 2012 Sound Transit open

house, CP 262, and materials provided explained that the Cost Savings Process would not be completed until 2013. CP 201. Thus, Sound Transit could not decide until 2013 on which side of NE 6th St the rail line would run. CP 226-27. Therefore, Sound Transit could not determine whether it would need to condemn either the Legacy Property or the Northwest Building property until 2013, after the Cost Savings Process had been completed. CP 226-27.

Nelson/Legacy misconstrued the FEIS and MOU and mistakenly concluded that the preliminary depiction of the rail line was a final plan:

All available documentation affirmed that the Final Plan for the East Link would not affect the premises.

CP 46 (Nelson). (Emphasis added.)

My understanding was that is how they were moving forward, with the underground station and the track alignment on the north side of NE 6th. I believed that to be a concrete plan.

CP 255 (Nelson). (Emphasis added.) Therefore, Nelson/Legacy believed in September 2012 that Sound Transit's designation of the Legacy Property as a potential acquisition in the FEIS, Appendix G-2, "was no longer accurate or attributable to the process." CP 255. As a result, Legacy incorrectly concluded that in September 2012, Sound

Transit posed no risk to the Legacy Property.

At no point during lease negotiations or prior to the Lease Agreement was Legacy aware that the Premises could be placed in jeopardy by the development of the East Link Light Rail System.

CP 241. (Emphasis added.)

During lease negotiations, Legacy/Nelson chose not to disclose to WGWSound Transit's designation of the Legacy Property as a potential acquisition for the chosen route through Bellevue, CP 258-59, 266, because, in Nelson's words, "all available public documentation affirmed that the Final Plan selected for the East Link would not affect the premises." CP 46.

By May 2013, Sound Transit's engineers had determined that Sound Transit must run the rail line on the south side of NE 6th St. along the northern portion of the Legacy Property. CP 222, 225. At this stage, the rail line path was at 60% engineering design. CP 222. Sound Transit also advised that it must acquire the Legacy Property by mid-2017, CP 230, less than half-way into WGWS's ten year lease, and that Sound Transit will need all of the parking area for construction purposes for at least a year. CP 47, 228 - 30.

The above facts are not in dispute, and both Legacy and WGWS filed cross-motions for summary judgment. During argument,

Legacy conceded that, had WGW attempted during lease negotiations to learn that the Legacy Property was at substantial risk of condemnation, that task would have been like looking for a:

...needle in a haystack in thousands upon thousands of pages on Sound Transit's website.

RP 11-21-14 at p 16, (Legacy's counsel), that:

The volume of information available is as staggering as it is public. There is no way to post it all in a pleading, or even a reasonable summary.

CP 422 - 23 (Legacy's counsel).

The trial court granted Legacy's motion for summary judgment and denied WGW's motion, CP 542, ruling that Legacy had no duty to disclose Sound Transit's potential need to acquire the Legacy Property. CP 495-97. The trial court dismissed WGW's complaint for rescission and entered judgment for Legacy against WGW and Guo for breach of lease and damages. CP 495-97. WGW and Guo appealed, seeking to vacate the trial court's orders and for remand for orders granting WGW's motion for summary judgment for rescission and judgment against Legacy for the \$124,866 security deposit and \$144,793 in tenant improvements.

On December 28, 2015, Division I of the Court of Appeals affirmed the trial court's orders, holding that Legacy had no duty to

disclose Sound Transit's potential need to acquire the Legacy Property because Sound Transit's potential need for the Legacy Property was readily ascertainable to WGW within the meaning of RCW 18.86.030, because the information was available on Sound Transit's voluminous website and because, having knowledge of Sound Transit's future proximity to the Legacy Property, WGW, as a prospective tenant, had a reason to inquire.

In so ruling, the Court of Appeals expressly disregarded Legacy's concession that discovering Sound Transit's potential need for the Legacy Property was like looking for a needle in a haystack among thousands of pages on Sound Transit's website. The Court of Appeals also disregarded that no one document on Sound Transit's website stated that Sound Transit had designated the Legacy Property as at substantial (50%) risk of condemnation, that information from portions of three documents had to be pieced together, and that even Legacy, whose property manager and broker had been tracking Sound Transit's potential need to condemn the Legacy Property since 2008, had been unable to understand the information on Sound Transit's website as that information related to the risk to the Legacy Property.

The Court of Appeals also disregarded that Legacy/broker Nelson provided WGW with false and misleading information; namely, that Sound Transit had "scheduled" its rail line to run on the Northwest Building side of NE 6th St., rather than that no decision had been made, and that Sound Transit's future proximity would be good for business, impliedly holding that WGW's mere knowledge of Sound Transit's future proximity, no matter what Legacy said and without any suggestion of a problem, was sufficient to place a duty on WGW to inquire as to hypothetical problems.

#### **V. ARGUMENT**

The Court of Appeals correctly noted that the term "apparent or readily ascertainable" in RCW 18.86.030, which requires brokers to disclose material information that is not apparent or readily ascertainable, is not defined by case law or statute. And because the Court of Appeals' decision is not published, the lack of definition remains to this day. Because interpretation of a statute is a question of law, **Nevers v. Fireside, Inc.**, 133 Wn.2d 804, 947 P.2d 721 (1997), this issue should now be decided by the Supreme Court. Those dealing with brokers in business transactions should know what information a broker must disclose.

Deciding this question helps prospective purchasers and tenants know when they must make inquiry on their own. For example, the Court of Appeals in the present case ruled that mere knowledge of Sound Transit's future proximity, placed upon the prospective tenant a duty to inquire as to hypothetical possible problems. But Legacy, the landlord, not only did not disclose that Sound Transit had designated the Legacy Property as a potential acquisition for Sound Transit's chosen route through Bellevue and that the risk to the Legacy Property was at 50%, Legacy affirmatively misrepresented as fact that Sound Transit had "scheduled" its rail line to run on the opposite side of the NE 6th St. overpass from the Legacy Property, when no such decision had been made. Did Legacy's misrepresentation of fact affect WGW's obligation, as the prospective tenant, to inquire as to possible hypothetical problems?

Furthermore, Legacy's property manager, who had been tracking Sound Transit's potential need to acquire the Legacy Property since 2008, was unable to understand from documents on Sound Transit's website the risk of condemnation to the Legacy Property. As a result, Legacy incorrectly believed during lease negotiations that Sound Transit's expansion could not place the

Legacy Property in jeopardy. Was the risk to the Legacy Property then "readily ascertainable?"

Legacy also has admitted in argument that trying to ascertain the risk to the Legacy Property from Sound Transit's website was like looking for a needle in a hay stack. Under these circumstances, was the risk of condemnation to the Legacy Property "readily ascertainable" under RCW 18.86.030?

The answer to all of these questions is very important to professionals in the real estate industry, so that brokers, agents, prospective buyers and sellers, and prospective landlords and tenants all know a broker's disclosure responsibilities. Even if Legacy/broker Nelson thought there was no risk, should not Legacy have disclosed Sound Transit's designation of the Legacy Property as a potential acquisition for the chosen route through Bellevue?

While no case construes "apparent or readily ascertainable" as the legislature intended by 18.86.030(1)(d), a number of cases interpret these terms in the fraudulent concealment context. The general rule is that when a prospective purchaser or tenant is aware of some actual problem, the purchaser or tenant must make inquiry, unless the seller or landlord made representations to deflect the need

for inquiry or a reasonable inquiry would not have uncovered the problem. *Atherton Condo. Apartment-Owners Ass'n. Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 524-25, 799 P.2d 250 (1990).

*Stieneke v. Russi*, 145 Wn. App. 544, 190 P.3d 60 (2008) most clearly illustrates this rule. There, a property seller failed to disclose that the roof had been leaking in the past, despite the seller's actual knowledge of the problem. The seller instead represented that the roof had no problems, and a home inspector found no evidence of water damage. As a result and despite the home inspector's routine recommendation, the purchaser declined to have a roof inspection. The Court of Appeals held that the purchaser's "reliance (on the seller's misrepresentation) was both reasonable and justifiable." 145 Wn. App. at p. 564. Citing *Alejandro v. Bull*, 159 Wn.2d 674, 690, 153 P.3rd 864 (2007), the Court of Appeals noted that "the right to rely element of fraud is intrinsically linked to the duty of the one to whom the representation was made to exercise diligence **with regard to those representations.**" (Emphasis in text.)

Equally important, because the seller's expert testified that nothing in the roof construction suggested it would leak, the problem, a leaking roof, "was not readily apparent (and that even a careful,

reasonable inspection would not have revealed the defect.)" 145 Wn. App. at p. 562. (The words in parentheses are included in the quote.)

The present case is very similar to ***Stieneke***. Here, not only did the landlord fail to disclose that Sound Transit had designated the Legacy Property for possible condemnation for the chosen route through Bellevue, information Legacy through its property manager had knowledge of, and that there was substantial risk of condemnation, information Legacy through its property manager should have known, Legacy affirmatively misrepresented that Sound Transit had "scheduled" its pathway on the opposite side of the NE 6th St. overpass from the Legacy Property, and Legacy portrayed Sound Transit's future proximity solely in positive terms. Further, by negotiating a ten year lease, Legacy impliedly represented it knew of no reason why Sound Transit would interfere with its ability to provide peaceful and quiet enjoyment of the Legacy Property for ten years. Therefore, just as it was reasonable and prudent for the prospective purchaser in ***Stieneke*** not to have a professional inspect the roof, so it was reasonable for WGW, the prospective tenant, not to make inquiry of Sound Transit as to possible hypothetical problems to the Legacy Property associated with Sound Transit's rail line expansion.

In addition, just as the seller's expert in *Stieneke* had been unable to discover why the roof was leaking, leading the Court of Appeals to hold that the information was not apparent or readily ascertainable, so Legacy's professional property manager had been unable to understand from the information on Sound Transit's website that the light rail expansion posed a real and substantial risk to the Legacy Property. Therefore, just as in *Stieneke*, the substantial risk to the Legacy Property from information on Sound Transit's website was not "apparent or readily ascertainable."

Other cases of relevance include *Sloan v. Thompson*, 128 Wn. App. 776, 115 P.3d 1009 (2005), which held that "only in situations where a purchaser discovers evidence of the defect, unless the defect is apparent, is the purchaser required to inquire further." 125 Wn. App. at p. 789, *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Company*, 115 Wn.2d 506, 799 P.2d 250 (1990), which held that:

Although a fraudulent concealment claim may exist even though the purchaser makes no inquiries which would lead him to ascertain the concealed defect, (citation omitted), in those situations where a purchaser discovers evidence of a defect, the purchaser is obligated to inquire further.

115 Wn.2d at p. 525, and ***Puget Sound Service Corporation v. Dalarna Management Corporation***, 51 Wn. App. 209, 215, 752 P.2d 1353 (1988):

We hold that where, as in this case, an actual inspection demonstrates some evidence of water penetration, the buyer must make inquiries of the seller. Through such questioning the extent of the problem could have been readily ascertained.

In the present case, the Court of Appeals erroneously held that WGW's mere knowledge of Sound Transit's future proximity was sufficient to place WGW on inquiry notice and that, because Sound Transit had published information on its website, the condemnation risk to the Legacy Property was readily ascertainable. In so holding, the Court of Appeals erroneously disregarded Legacy's affirmative misrepresentations that Sound Transit had already scheduled its rail line to run on the opposite side of the NE 6th St. overpass from the Legacy Property and that Sound Transit's future proximity would be good for Legacy's business, which misrepresentations deflected any reason WGW may have had to inquire further.

The Court of Appeals also erroneously disregarded Legacy's admission during argument that the task of ascertaining the true risk to the Legacy Property from Sound Transit's website was like finding

a needle in a hay stack. This is the kind of admission Washington courts have allowed:

(The party) contends that the additional amount claimed by Tide Air represents debts owed by Mills which are unrelated to the repair of the aircraft. This contention is somewhat confirmed by the record and the admissions during argument.

(Emphasis added.) *International Sales and Lease, Inc. v. Seven Bar Flying Service, Inc.*, 12 Wn. App. 894, 895, 533 P.2d 445 (1975).

Here, Legacy's admission is confirmed by the record. The FEIS had at least seven appendices, F, G1, G2, G3, H, J and K. CP 180. Not one document, let alone one page, advised that the Legacy Property was at substantial risk in September 2012 for condemnation for the chosen route through Bellevue. Portions of Appendix G2 of the FEIS, the MOU and the Cost Savings Process documents all had to be reviewed together. Most importantly, Legacy's professional property manager, who actually reviewed the relevant documents, could not understand the information and wrongly concluded that there was absolutely no risk to the Legacy Property by Sound Transit's future expansion.

The Court of Appeals also placed misguided emphasis on

Sound Transit's decision to build a transit station at 108th Avenue NE and NE 6th. CP 230. This proposed transit station is four blocks (108th to 112th) and up the hill from the Legacy Property. CP 185, 202.

The Court of Appeals also placed undue emphasis on the fact that Sound Transit had identified 29 properties as potential acquisitions for route C9T, the route chosen through Bellevue. CP 184. See Appendix D hereto. As seen by the conceptual right-of-way map, CP 185, also part of Appendix D, the only parcels relevant to the risk associated with the Legacy Property were C9004, the Northwest Building, and C9003, the Legacy Property (identified as "Coco's.") See Appendix D hereto. The other properties listed as potential acquisitions are located either before or after the rail line crosses I-405 on NE 6th St. and are not relevant to the risk to the Legacy Property.

## ***VI. CONCLUSION***

The Court of Appeals erred in holding that the risk of condemnation was readily apparent, merely because WGW had knowledge of Sound Transit's expansion close to the Legacy Property. Legacy, whose property manager could not understand the

information on Sound Transit's website, withheld critical information from WGW, misrepresented to WGW critical information and by negotiating a ten year lease necessarily implied that it knew of no reason the property would be available for the full uninterrupted lease.

WGW and Guo request that the Court of Appeals' decision be reversed, that the trial court's summary judgment orders be vacated, and that this court order remand to the trial court for orders granting WGW's motion for summary judgment for rescission of the lease and damages equal to the \$124,866 security deposit and \$144,793 in tenant improvements, the figures of which are not contested, plus attorney's fees at the trial court level and on appeal.

DATED this 26th day of JANUARY, 2016.

Respectfully submitted,

LAW OFFICES OF DOUGLAS W. SCOTT

By: 

MICHAEL TODD DAVIS  
WSBA No.: 11794  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington, that on this day a copy of the Appellant's Petition for Review was sent by E-Mail transmission to Timothy J. Graham, Attorney for Respondent Legacy at tgraham@hansonbaker.com and to Jennifer L. Treadwell Karol, Attorney for Respondent Legacy at jkarol@cedarriverlaw.com.

*Ingrid C. Vermehren*

Ingrid C. Vermehren

Dated: JANUARY 26th, 2016, at Issaquah,  
Washington

10:11:10 AM  
JAN 27 2016  
ISSAQUAH, WA

# **APPENDIX A**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

WGW USA, INC., a Washington Corporation,  
Appellant,  
v.  
LEGACY BELLEVUE 530, LLC, a Washington Limited Liability Company,  
Respondent.

LEGACY BELLEVUE 530, LLC, a Washington Limited Liability Company,  
Respondent,  
v.  
TIAN QING GUO, individually and the marital community of TIAN QING GUO and JANE DOE GUO,  
Appellants.

No. 72939-0-1

DIVISION ONE

UNPUBLISHED OPINION

2015 DEC 28 AM 11:23

CLERK OF THE COURT  
STATE OF WASHINGTON

FILED: December 28, 2015

TRICKEY, J. — To succeed on a claim for negligent misrepresentation, based on a broker's failure to disclose material information, the complaining party must provide some evidence that the information was not readily ascertainable. Here, given that a commercial tenant had actual knowledge of a light rail expansion close to the property, the undisclosed facts about Sound Transit's plans were readily ascertainable. Therefore, the tenant is not entitled to rescind a lease based on alleged negligent misrepresentation. We affirm.

## FACTS

William Nelson began working for Legacy Commercial, LLC in 2007. Legacy Commercial is the parent company of Legacy Bellevue 530, LLC (Legacy). Legacy owns the property at 530 112th Avenue N.E., in downtown Bellevue, Washington (the Property). Nelson's responsibilities included property management.

For years, Sound Transit and the city of Bellevue have been working together on the East Link Project, which will bring the link light rail, a commuter rail service, through Bellevue. In December 2008, Sound Transit published a draft Environmental Impact Statement (EIS) that identified a number of possible routes and included the Property as a "potentially affected parcel[]." <sup>1</sup> The EIS did not specify the likelihood of acquiring any particular parcel, or whether Sound Transit was contemplating a "partial" or "full" acquisition of any specific parcel. <sup>2</sup>

Sound Transit released its final EIS in July 2011. Sound Transit chose C9T (110th N.E. Tunnel Alternative) as the "preferred alternative" route at that time. That route planned to have the light rail cross the Interstate 405 overpass at the intersection of N.E. 6th Street and 112th Avenue N.E. The light rail would cross at the north side of the intersection; the Property is on the south side. The final EIS also included the Property as a "potentially affected parcel[]." <sup>3</sup> It still did not specify whether there would be full or partial acquisitions of specific properties. Later that

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<sup>1</sup> Clerk's Papers (CP) at 176-77, 180.

<sup>2</sup> WGW asserted in its reply brief and during oral argument that there was, at that time, a 50 percent chance that Sound Transit would need to condemn the property. That claim is not supported by the record.

<sup>3</sup> CP at 184.

year, the city of Bellevue and Sound Transit signed a "Memorandum of Understanding," agreeing to route C9T.<sup>4</sup> All of these documents were available to the public online at Sound Transit's web site.

Nelson was aware of these developments. He attended at least one Sound Transit open house on the subject. He believed that there was not a real threat of Sound Transit needing to acquire the Property because the light rail path was always depicted as crossing the north side of the street and because it would have been very expensive for Sound Transit to acquire all the properties listed as "potential property acquisition[s]."<sup>5</sup>

During the fall of 2012, WGW USA, Inc. expressed interest in leasing the Property for a new restaurant. Tian Qing Guo is the president and sole shareholder of WGW USA, Inc. (WGW). WGW hired real estate broker, Maci Lam, to help with the negotiations. Nelson negotiated on behalf of Legacy.

Nelson notified WGW that Sound Transit intended to build a station two blocks away from the Property. Nelson suggested that the light rail would increase foot traffic, which would be good for business. Nelson did not mention the possibility of Sound Transit acquiring the Property.

Neither Guo nor Lam asked Nelson anything about the possibility of Sound Transit needing to condemn part or all of the Property. Nor did they conduct any independent research on the proposed light rail project.

Representatives from WGW and Legacy signed a 10-year lease in September 2012. The lease commenced on October 1, 2012. Guo personally

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<sup>4</sup> CP at 187-88.

<sup>5</sup> CP at 252, 255-56

guaranteed the lease.

In March 2013, Sound Transit contacted Legacy to inform it that an alternative plan for the light rail had been proposed. The new plan relocated the track to the south side of the N.E. 6th Street overpass. The Bellevue City Council approved Sound Transit's new plan in late April 2013. Because the track would run on the south side of N.E. 6th Street, Sound Transit would have to put at least one support column on the Property and, at least temporarily, condemn all or most of the Property's parking lot by the second quarter of 2017.

By this time it was clear that WGW's restaurant was not doing well. Guo decided to "cut [his] losses" and attempted to sell the business in April 2013.<sup>6</sup> WGW's business broker contacted Nelson in mid-May to discuss the property. Nelson informed the broker of Sound Transit's interest in the property. Because of the potential condemnation, prospective purchasers lost interest in the restaurant. The broker concluded that the business was not marketable. WGW then hired attorneys who discovered the history of Sound Transit's designation of the Property as a "potentially affected parcel[]." <sup>7</sup>

WGW failed to make its rent payment for June 2013. WGW notified Legacy that it was seeking rescission of the lease on June 18, 2013. Guo claimed he would never have entered into the lease if he had known about the Property's designation as a "potentially affected parcel[]." <sup>8</sup> On June 20, 2013, Legacy served WGW with a "Three Day Notice to Pay or Vacate."<sup>9</sup> WGW abandoned the

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<sup>6</sup> CP at 265.

<sup>7</sup> CP at 180.

<sup>8</sup> CP at 401-02.

<sup>9</sup> CP at 48, 75.

Property. Legacy, offering better terms (specifically a lower security deposit and lower rent), leased the Property to XO Café, Inc.

WGW filed an action against Legacy for rescission of the lease based on Legacy's alleged fraudulent or negligent misrepresentation. Legacy cross-claimed against WGW for breach of the lease and against Guo for breach of his personal guaranty. The parties filed cross-motions for summary judgment. The court ruled in favor of Legacy on all motions. WGW and Guo timely appeal.

## ANALYSIS

### *Evidentiary Ruling*

WGW argues that several passages in Bruce Kahn's declaration, which it relied on in the summary judgment hearing and again in its brief on appeal, are admissible as expert opinions. We disagree.

The trial court granted Legacy's motion to strike portions of Bruce Kahn's declaration because some of his opinions were "improper legal conclusions" and "opinions based on speculation rather than evidence."<sup>10</sup> We conclude that the trial court properly excluded this evidence.<sup>11</sup>

Expert opinions are admissible if (1) the witness is "properly qualified," (2) the witness "relies on generally accepted theories," and (3) the witness's "testimony is helpful to the trier of fact." Philippides v. Bernard, 151 Wn.2d 376, 393, 88 P.3d 939 (2004); ER 702. An expert may testify as to matters of law, but experts may not testify as to conclusions of law. Hyatt v. Sellen Const. Co., Inc.,

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<sup>10</sup> The trial court did not specify which portions it had stricken.

<sup>11</sup> We exclude, rather than strike, inadmissible materials submitted for consideration with a motion for summary judgment. Cameron v. Murray, 151 Wn. App. 646, 658, 214 P.3d 150 (2009).

40 Wn. App. 893, 899, 700 P.2d 1164 (1985); Everett v. Diamond, 30 Wn. App. 787, 791, 638 P.2d 605 (1981). Opinion testimony is improper when it explains what legal duties apply and whether parties have fulfilled them. Hyatt, 40 Wn. App. at 899; Everett, 30 Wn. App. at 792. Expert testimony is also improper if its only basis is theoretical speculation. Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha, 126 Wn.2d 50, 103, 882 P.2d 703 (1994).

We review a trial court's evidentiary rulings made in conjunction with a summary judgment motion de novo. Ross v. Bennett, 148 Wn. App. 40, 45, 203 P.3d 383 (2008).

Here, Kahn is a licensed broker with 15 years of experience. WGW and Guo assert that the following testimony from Kahn's declaration and supplement declaration are admissible:

I note that Legacy tries to distinguish between commercial and residential transactions in terms of a broker's duty to disclose material information. There is no such distinction. While a Form 17 disclosure may be required for residential transactions, an owner's broker's duty to disclose material information to either a prospective buyer or tenant remains the same, whether in a commercial or residential transaction.<sup>[12]</sup>

When the transaction is a purchase, one can reasonably expect the prospective buyer to diligently investigate the property for possible problems, and almost always, there are contingencies to allow for the buyer to conduct a due diligence investigation. But when the transaction is a lease, all the prospective lessee is concerned with, beyond location and physical suitability of the property, is whether the landlord can provide peaceful and quiet enjoyment for the lease term. And if the landlord is negotiating a 10 year lease, such as the lease in question, then the landlord has impliedly represented that the landlord can provide peaceful and quiet enjoyment for the full term of the lease.<sup>[13]</sup>

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<sup>12</sup> CP at 469.

<sup>13</sup> CP at 361.

My final comment concerns the form condemnation clause in the 9-17-12 lease. These clauses are intended to deal with condemnation situations that are unforeseen when the lease was negotiated. They are not meant to provide a shield to allow the property owner to intentionally withhold information that a public agency already has designated the leasehold property as a "potential property acquisition."<sup>14</sup>

These passages attempt to define the scope of a broker's legal duty to disclose information, a tenant's duty to investigate, and the legal significance of stock language in a lease. This is improper expert opinion testimony about legal matters. Additionally, this testimony is speculative. Kahn speculates about a tenant's interests and what a tenant and landlord meant by certain contractual language. Because this testimony contains improper legal conclusions and opinions based on speculation, we exclude it as inadmissible.

#### *Summary Judgment*

WGW argues that the trial court improperly granted summary judgment in favor of Legacy on the breach of contract, breach of personal guaranty, and rescission claims. We disagree.

Summary judgment is appropriate when the moving party "show[s] that there is no genuine issue as to any material fact and that [it] is entitled to a judgment as a matter of law." CR 56(c). We must "interpret all the facts and inferences therefrom in favor" of the nonmoving party. Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014).

We review summary judgment rulings de novo. Lyons, 181 Wn.2d at 783. We engage in the same inquiry as the trial court. Lyons, 181 Wn.2d at 783.

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<sup>14</sup> CP at 361.

*Rescission*

WGW seeks to rescind its lease with Legacy on the grounds of "negligent and/or fraudulent misrepresentation."<sup>15</sup> Legacy contends that WGW cannot maintain an action for rescission because WGW is in default of the lease.

A tenant in default may maintain an action for rescission if it clearly establishes such facts as would excuse performance. Eberhart v. Lind, 173 Wash. 316, 319, 23 P.2d 17 (1933). Negligent misrepresentation provides an excuse for nonperformance and grounds for rescission. Bloor v. Fritz, 143 Wn. App. 718, 738, 180 P.3d 805 (2008). Therefore, if WGW is able to sustain its negligent or fraudulent misrepresentation claims, its default would not prevent it from pursuing rescission.<sup>16</sup> We consider those claims next.

WGW argues that Nelson negligently misrepresented facts material to the lease negotiations by failing to disclose them. In general, Nelson did not disclose that Sound Transit had designated the Property as one that it might need to acquire and that all of these plans would not be final for another couple years. We disagree that it was negligent misrepresentation not to disclose this information.

Failure to disclose material information may constitute misrepresentation of that information. A claim of negligent misrepresentation may rest on an omission by one party when that party has a duty to disclose information. Alexander v. Sanford, 181 Wn. App. 135, 177, 325 P.3d 341 (2014), review granted, 181 Wn.2d

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<sup>15</sup> Appellants' Br. at 38 (bold face omitted).

<sup>16</sup> Legacy contends that the threat of condemnation was not a sufficient basis to rescind the contract. See Lind, 173 Wash. at 319-20. However, WGW is not alleging that it is entitled to rescission based on the possibility that the Property will be condemned; it is alleging that Legacy misrepresented that possibility.

1022, 339 P.3d 634 (2014), dismissed, No. 90642-4 (Wash. May 8, 2015). Failure to disclose that information is treated as if the party “had represented the nonexistence of the matter that [it] has failed to disclose.” Richland Sch. Dist. v. Mabton Sch. Dist., 111 Wn. App. 377, 385, 45 P.3d 580 (2002) (quoting RESTATEMENT (SECOND) OF TORTS § 551 (1977)). Some statutes create such a duty. Colonial Imports, Inc. v. Carlton Nw., Inc., 121 Wn.2d 726, 732, 853 P.2d 913 (1993).

Licensed real estate brokers have several mandatory disclosure requirements. Under RCW 18.86.030(1), a “broker owes to all parties to whom the broker renders real estate brokerage services the following duties: . . . (d) [t]o disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party.”

Here, Nelson was performing “real estate brokerage services,” because he was negotiating a lease of real property. RCW 18.85.011(2), (16)(b), (17), .331; RCW 18.86.010(11).<sup>17</sup> Nelson did not disclose the following information that WGW alleges is material:

(1) that Sound Transit had designated the Legacy Property as a potential acquisition for the chosen route through downtown Bellevue; (2) that Sound Transit’s depiction of the light rail line on the north side of the NE 6th Street overpass was subject to change, as much more engineering work was required; (3) that even though Sound Transit had shown the rail line as on the north side of the NE 6th Street overpass and the Legacy Property is on the south side, Sound Transit may need to condemn the Legacy Property for construction purposes; and (4) no final decision would be made until 2013.<sup>[18]</sup>

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<sup>17</sup> CP at 45.

<sup>18</sup> Appellants’ Br. at 32.

As noted above, Nelson did not have a duty to disclose information that was readily ascertainable. Thus, we must consider whether this information was readily ascertainable.

The statute does not define "readily ascertainable." We may use a standard dictionary to determine the phrase's plain meaning. State v. Sullivan, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001). "Readily" means "with fairly quick efficiency: without needless loss of time : reasonably fast" or "with a fair degree of ease: without much difficulty : with facility." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1889 (2002). *Webster's Dictionary* defines "ascertain" as to "find out or learn for a certainty (as by examination or investigation) : make sure of: DISCOVER." WEBSTER'S at 126. Therefore, information is readily ascertainable to a party if the party could discover it quickly or easily.

Facts are ascertainable if they are publically available. Legacy provided undisputed evidence that all this information was a matter of public record. Therefore, we hold that there is no genuine dispute that the undisclosed information was ascertainable. The question is whether the information was *readily* ascertainable.

WGW offers several reasons for its failure to investigate Sound Transit's potential impact on the Property. These arguments seem to be acknowledgements that WGW could have found the information, but that it was not *readily* ascertainable.

WGW claims that it would have been "extremely difficult" for Guo or Lam to discover Sound Transit's designation of the Property as a potentially affected

parcel. It relies on Legacy's characterization of the information as a "needle in a haystack in thousands upon thousands of pages on Sound Transit's website."<sup>19</sup> But, WGW did not introduce any evidence of the difficulty in independently discovering the undisclosed information over the Internet or with some other method of inquiry. As the plaintiff, it is WGW's burden to produce *some* evidence that the information was not readily ascertainable. See Young v. Key Pharm., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

WGW also contends that the information was not readily ascertainable because there was no reason to investigate. While the statute does not require a reason to investigate, having a reason to investigate a particular subject makes that investigation easier and faster. Therefore, a party's knowledge, or lack of knowledge, about a subject may impact whether material facts are readily ascertainable.

The two cases WGW cites provide limited support for this interpretation of "readily." The first, Bloor, involved a negligent misrepresentation claim based on a broker's failure to disclose material information under RCW 18.86.030. 143 Wn. App. 718, 733, 180 P.3d 805 (2008). There, the undisclosed information was published in a news article. Bloor, 143 Wn. App. at 726. The plaintiffs were able to discover the house's history of drug manufacturing once they heard rumors that the house was known as a "drug house." Bloor, 143 Wn. App. at 726. Thus, the information was likely ascertainable before the plaintiffs purchased the house. But, because the defendant argued solely that he did not know about the defect, the

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<sup>19</sup> Appellants' Br. at 36.

court did not address whether the undisclosed information was readily ascertainable. Bloor, 143 Wn. App. at 733.

The second case, Sorrell v. Young, analyzes a similar situation, in which the seller of a lot was required to disclose defects that were not "apparent or readily ascertainable." 6 Wn. App. 220, 225-27, 491 P.2d 1312 (1971). There, the plaintiff did not realize that the lot he was purchasing had fill. Sorrell, 6 Wn. App. at 221. The defect was not apparent and the plaintiff did not make any inquiries about the existence of fill. Sorrell, 6 Wn. App. at 221. WGW argues that the reason the existence of the fill was not readily ascertainable, even though it could have been discovered by a soil inspection, was that the plaintiffs had no reason to inspect the soil. The court did not say anything to this effect in the opinion. Still, it held that the plaintiff provided sufficient evidence that the existence of fill was not "apparent or readily ascertainable" without discussing how difficult it would have been for the plaintiff to discover the fill before purchasing the property. Sorrell, 6 Wn. App. at 225-26.

However, WGW's situation is distinguishable from that of the Bloor and Sorrell plaintiffs, who had no prepurchase knowledge of the defects in their properties. WGW knew about the light rail expansion. Nelson told Lam and Guo that Sound Transit was expanding the light rail and would be constructing a station just blocks away from the Property. Nelson opined that the station would be good for business because it would increase pedestrian traffic.

WGW argues that it did not have a reason to investigate the effects of the Sound Transit expansion because Nelson always cast the light rail expansion in a

positive light. This is not persuasive. It is obvious that the construction of a light rail station in close proximity to a restaurant could have both negative and positive impacts.<sup>20</sup> Once WGW knew about the light rail expansion, it had a reason to look into the matter further.

Finally, WGW contends that the potential for condemnation was not readily ascertainable because WGW was relying on Nelson's statutory duty to disclose material facts. WGW's argument is circular because Nelson did not have a statutory duty to disclose the information if it was readily ascertainable. Therefore, WGW must show that the information was *not* readily ascertainable before it relies on Nelson's statutory duty to disclose it.

In short, Legacy's evidence, that WGW knew about the light rail expansion in general, and that the undisclosed information was a matter of public record, supports its position that all the undisclosed information in this case was readily ascertainable. WGW has not introduced evidence that raises a genuine issue of material fact on this issue.

Thus, Nelson did not have a statutory duty to disclose that information, regardless of whether it was material. Accordingly, we need not address whether the undisclosed information was material. Because Nelson did not have a duty to disclose Sound Transit's designation of the Property as potentially affected, the fact that he did not disclose it does not support a claim of negligent

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<sup>20</sup> WGW also relied on Kahn's declaration in support of its claim that it had a reduced duty to investigate because WGW was a potential lessee, not a purchaser. As discussed above, this portion of Kahn's declaration is inadmissible because it includes improper legal conclusions and opinions based on speculation. WGW has not offered any legal authority for that distinction.

misrepresentation.

WGW next argues that Nelson's partial disclosures are tantamount to fraudulent misrepresentation. Because WGW did not properly raise this argument until its reply brief, we do not consider it.

In its opening brief, WGW refers to its claim as "[n]egligent and/or [f]raudulent [m]isrepresentation."<sup>21</sup> But WGW does not discuss the elements of fraudulent misrepresentation until its reply brief.<sup>22</sup> In its reply brief, WGW raises the argument that Nelson's "half-truths" and opinions amounted to affirmative misrepresentations for the first time.<sup>23</sup> We do not consider arguments raised for the first time in a reply brief. Axess Int'l Ltd. v. Intercargo Ins. Co., 107 Wn. App. 713, 719, 30 P.3d 1 (2001) ("An issue raised and argued for the first time in a reply brief is raised too late.").

Finally, WGW bases its misrepresentation claims against Legacy on the failure of Nelson, Legacy's alleged agent, to disclose material information. Legacy asserts that WGW fails to meet its burden of showing an agency relationship, or that Nelson's knowledge is imputed to Legacy. WGW relies on common law principles of agency. It is not clear that WGW properly pleaded Legacy's vicarious liability to the trial court. WGW's complaint was not designated in the clerk's papers.<sup>24</sup> Legacy asserts that WGW did not plead vicarious liability or offer any

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<sup>21</sup> Appellants' Br. at 38 (boldface omitted).

<sup>22</sup> Appellants' Br. at 38; Appellants' Reply Br. at 15-25.

<sup>23</sup> Appellants' Reply Br. at 18-20. In its opening brief, WGW states that the information Nelson provided was misleading and inaccurate, but the claims it makes are based on his "[f]ailure to [d]isclose." Appellants' Br. at 38-40 (boldface omitted).

<sup>24</sup> RAP 9.6(b)(1)(C) requires the party seeking review to include the complaint in the clerk's papers. However, we have a sufficient record to decide the case on other grounds.

proof that Nelson was an agent of Legacy in that complaint. Because we hold that Nelson did not violate a statutory duty, we do not need to decide whether he was Legacy's agent.<sup>25</sup>

We affirm the trial court's dismissal of WGW's claim for rescission because the undisclosed information was readily ascertainable.<sup>26</sup>

*Default and Breach of Personal Guaranty*

WGW's only response to Legacy's motion for summary judgment on its claims that WGW defaulted on the lease and that Guo breached his personal guaranty, is that Legacy negligently or fraudulently misrepresented material facts. As discussed above, we affirm the dismissal of those claims against Legacy. Accordingly, WGW and Guo have no defense to Legacy's claims. We affirm the trial court's granting of summary judgment to Legacy on the claims that WGW defaulted on the lease and Guo breached his personal guaranty.

*Attorney Fees*

WGW argues that it is entitled to fees on appeal. It relies on its lease with Legacy, which contained a clause that allows the prevailing party to collect attorney fees. Because WGW is not the prevailing party, it is not entitled to attorney fees.

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<sup>25</sup> Additionally, both parties appear to assume that common laws of agency apply. Neither party addresses the statutory limitations on vicarious liability and imputed knowledge contained in Washington's Real Estate Brokerage Relationships chapter. RCW 18.86.090, .100. These statutes depart from the common law of agency.

<sup>26</sup> WGW initially brought its action for rescission based on both a failure of consideration and the negligent or fraudulent misrepresentation claim argued before this court. CP at 142. We do not consider a failure of consideration argument because WGW has not raised it on appeal.

We affirm.

Trickey, J

WE CONCUR:

Appelwick, J

Becker, J

# **APPENDIX B**

### **18.86.030. Duties of licensee**

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2) (e) or (f), whichever occurs earliest; and

(g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable.

[1996 c 179 § 3.]

# **APPENDIX C**

### 18.86.010. Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

(a) Was acquired by the licensee during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter 18.85 RCW.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

(12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents.

[1996 c 179 § 1.]

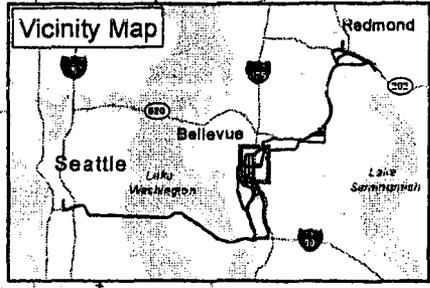
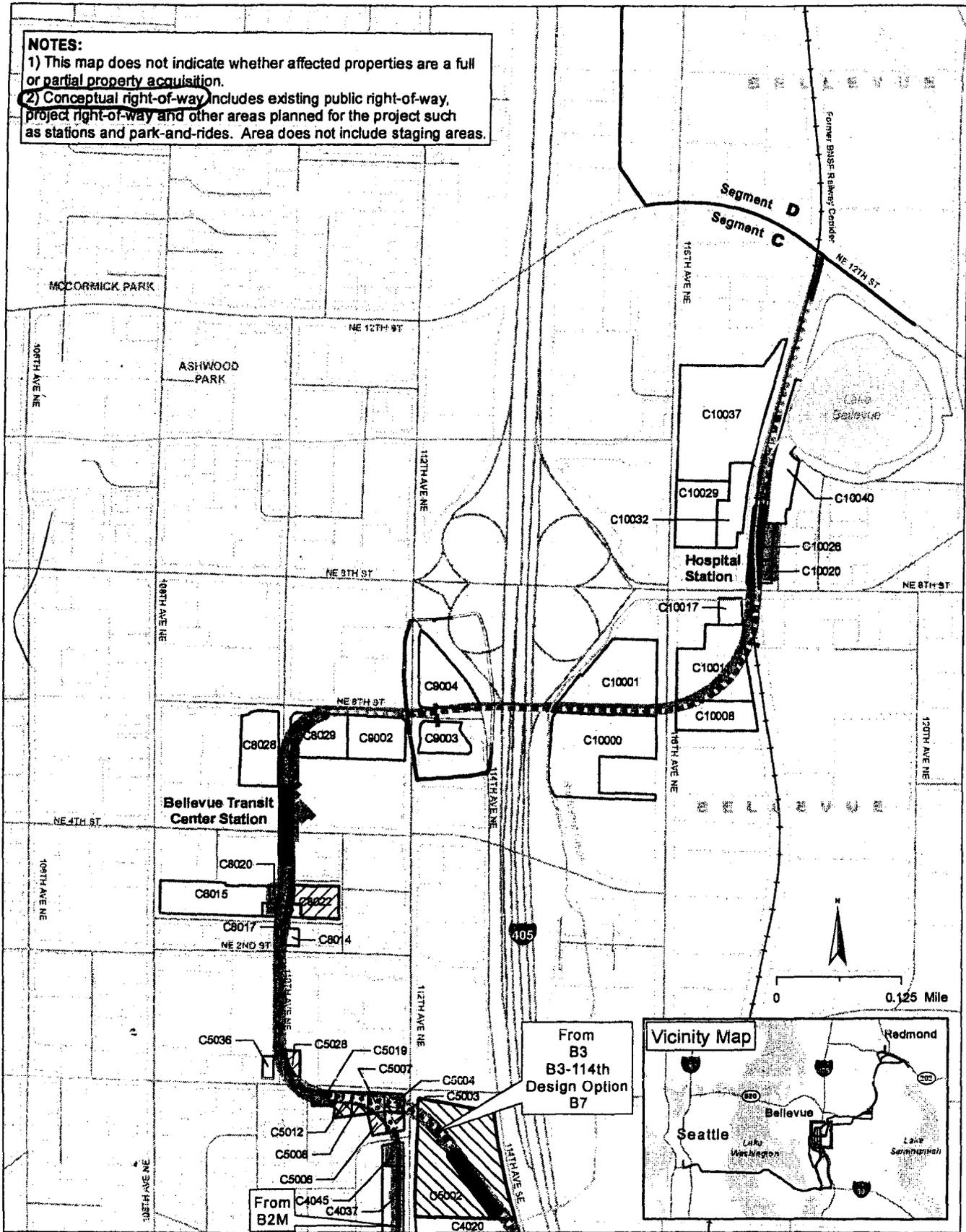
# **APPENDIX D**

TABLE G2-10

C9T: Potential Property Acquisitions for Preferred 110th NE Tunnel Alternative (C9T)

Map ID	Parcel Number	Property Name	Site Address
C5004	8146100645	Westmark Financial Services	11121 Main Street
C5007	8146100650	Art gallery	11113 Main Street
C5008	8146100655	Office	11105 Main Street
C5012	8146100660	Clinic	11041 Main Street
C5019	6729700005	Office	106 110th Place SE
C5028	3225059089	Office	11000 Main Street
C5036	3225059105	Vacant	10950 Main Street
C6015	2905700045	Pinnacle BellCentre Apartments	308 108th Avenue NE
C8014	3699800080	Vacant	Southeast corner of 110th Avenue NE and NE 2nd Place
C8016	3699800030	Vacant	N/A
C8017	3699800035	Vacant	Northeast corner of 110th Avenue NE and NE 2nd Place
C8020	8087600029	Vacant	Northwest corner of 110th Avenue NE and NE 2nd Place
C8022	8087600035	Connies Third Street Studio	Northeast corner of 110th Avenue NE and NE 2nd Place
C8028	3225059058	City Center Plaza	555 110th Avenue NE
C8029	3225059017	Bellevue City Hall parking garage	1105 NE 6th Street
C9002	3225059216	Vacant	11101 NE 6th Street
C9003	3225059201	Coco's	530 112th Avenue NE
C9004	3225059003	Northwest Building	700 112th Avenue NE
C10000	3225059005	Office building	555 116th Avenue NE
C10001	3225059002	Coast Bellevue Hotel	625 116th Avenue NE
C10008	3325059124	Auto dealership (Hummer and Cadillac of Bellevue)	800 116th Avenue NE
C10011	3325059036	Auto showroom and service garage	614 116th Avenue NE
C10017	3325059010	Auto parts (retail)	11635 NE 8th Street
C10020	1099100490	Sunset Glass	11660 NE 8th Street
C10026	6093500000	Office building	800 118th Avenue NE
C10029	2825059080	Whole Foods Market	888 116th Avenue NE
C10032	2825059083	Whole Foods parking	888 116th Avenue NE
C10037	2825059019	Design Market	1014 116TH AVE NE
C10040	6093500000	Nine Lake Bellevue Condominium	9 Lake Bellevue Drive
<b>Connecting from Preferred 112th SE Modified Alternative (B2M)</b>			
C2000	3225059140	Surrey Downs Park	675 112th Avenue SE
C2001	8146300280	Single-family residence	1121 SE 4th Street
C4000	8146300275	Single-family residence	11131 SE 4th Street

**NOTES:**  
 1) This map does not indicate whether affected properties are a full or partial property acquisition.  
 2) Conceptual right-of-way includes existing public right-of-way, project right-of-way and other areas planned for the project such as stations and park-and-rides. Area does not include staging areas.



Source: Data from CH2M HILL (2007) and King County (2010).

- |      |                                   |         |                     |  |  |
|------|-----------------------------------|---------|---------------------|--|--|
| 1119 | Map ID & Affected Parcel Boundary | —       | At-Grade Route      |  | Conceptual Right-of-Way and Areas to be Acquired |
|      | Proposed Station                  | - - - - | Elevated Route      |  | Construction Staging Area                        |
|      |                                   | •••••   | Retained-Cut Route  |  | Construction Staging Area (From B3 & B7 Only)    |
|      |                                   | •••••   | Retained-Fill Route |  |  |
|      |                                   | - - - - | Tunnel Route        |  |  |

Exhibit G2-20  
 Affected Parcels, Segment C  
 Preferred Alternative C9T  
 East Link Project